

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
)	

Comments on NOTICE OF PROPOSED RULE MAKING AND ORDER

Submitted by: City of Boston

On behalf of: Boston Public Schools
Boston Public Library

I. INTRODUCTION

1. The City of Boston is pleased to submit the following comments in response to the above mentioned Notice of Proposed Rule Making. These comments are submitted on behalf of the Boston Public Schools and the Boston Public Library. Through these two organizations, the E-Rate program has had a substantial positive impact on the lives of the citizens of Boston. The following comments are aimed at ensuring the continuation of the E-Rate program in a form that will ensure its continuing positive impact. The comments are in **bold** after the relevant question from the NPRM.

Submitted by:

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A. Application Process

1. Eligible Services

2. Many parties, including schools and libraries as well as service providers, have recommended that we seek comment on the efficiency and fairness of this process for determining the eligibility of particular products and services. In response, we invite parties to submit proposals for changes that will improve the operation of the eligibility determination process in terms of efficiency, predictability, flexibility, and administrative cost. We note that GAO has recommended that the Administrator implement stronger measures to ensure that applicants receive funding only for eligible services, and that the Administrator has already implemented changes in response to that recommendation. One possible alternative approach that has been suggested would be to establish a computerized list accessible online, whereby applicants could select the specific product or service as part of their FCC Form 471 application. Because applicants would only select from pre-approved products and services, this presumably would decrease the number of instances in which applicants seek funding for ineligible services. It has also been suggested that such a process would considerably simplify the application review process. Further, by helping to avoid accidental funding of ineligible services, it would further the Commission's goal of preventing fraud and abuse. We seek comment on whether this approach is desired, consistent with our goals, and on the feasibility of such a system. We seek comment on how often such a list would be updated. We also seek comment on how we could ensure that maintaining such a list does not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace. In addition, we seek comment on how interested parties could best provide input to the Administrator on an ongoing basis regarding what specific products and services should be eligible. Additionally, we seek comment on how to handle services and equipment that are eligible only if used in certain ways

The City of Boston believes that the maintenance a computerized list of eligible services would be infeasible. Too many vendors create too many part numbers. Vendors change model numbers at a very rapid rate as technologies and markets evolve. Such a list would have to be continuously updated. Appeals of decisions regarding what was on the list would be continuous and render the validity of the list uncertain.

3. We seek comment on whether to change our current policy, as set forth in our rules and decisions, regarding Wide Area Networks (WANs). In the *Fourth Order on Reconsideration*, the Commission concluded that the building and purchasing of WANs to provide telecommunications is not eligible for discounts. The Commission first concluded that the building and purchasing of WANs themselves does not constitute telecommunications services or internal connections. The Commission further found that WANs built and purchased by schools and libraries do not appear to fall within the narrow provision that allows support for access to the Internet because WANs provide broad-based telecommunications. The Commission noted, however, that schools and libraries may receive universal service discounts on WANs provided over leased telephone lines, because such an arrangement constitutes a telecommunications service.

The City of Boston believes that purchasing premise-based WAN equipment should be allowed under the Internal Connections category. Given the rapid convergence of voice, video and data communications and the increasingly common availability of fiber optic

based Metropolitan Area Networks makes distinctions between Local Area Networks within a building and Metropolitan Area Networks among buildings increasingly artificial. Funding for WAN equipment or wiring off the premise of eligible entities should remain ineligible. Laying of fiber or copper across rights-of-way entails an enormous expense that current E-Rate funding levels can not support.

4. Certain state government representatives have suggested that we reconsider whether our policies regarding WANs have resulted in an efficient use of program funds, and, in particular, whether providing discounts on the cost of telecommunications service utilizing WANs has indeed caused a “critical drain” on program resources. Leased WAN service is, under our rules, a Priority One service. The costs of leasing WANs therefore decreases funds available for other Priority One services. We seek comment on the effectiveness and fairness of our WAN policy, and on whether other policies could result in a more equitable distribution of discounts in the program.

Telecommunications services such as T1 or ATM lines are a critical part of the communications infrastructure and should be eligible services. The strategy selected by both the BPS and the BPL to minimize administrative costs for access to Internet services and email is to centralize as many services, such as email servers, web servers and web filtering. This strategy results in high-capacity Internet access lines to central locations and WAN telecommunications lines deployed to branches. If such WAN telecommunications lines were not eligible then Internet access lines would be required at each school and library. This would increase costs to the E-Rate since Internet lines are more expensive than simple telecommunications lines of similar capacity. It would also increase the cost of managing these technology resources by the BPS and BPL.

5. One possible approach would be to increase the three-year period of time over which WAN-related capital expenses must be recovered through telecommunications service charges, so that the annual burden on available program funds is reduced. We seek comment on this and other possible approaches.

The City of Boston is concerned that many vendors are engaging in sales strategies that are moving more equipment that should be funded as Internal Connections into Telecommunications or Internet Access. Such a shift will significantly degrade the ability of the E-Rate program to meet its goals of bringing the Internet into all schools by curtailing funds available to schools and libraries with the most need. The SLD must be diligent in assuring that Internal Connections items do not improperly move to Internet Access or Telecommunications Services.

Since the telecommunications are available only as services with ownership strictly prohibited it is reasonable to require capital costs be amortized over a period of time. Payment over a period of time is what distinguishes a service from owned equipment.

6. Similarly, we seek comment on whether our decision in the *Tennessee Order* to consider leased WANs as a Priority One service has led to a fair and equitable distribution of funds. Some parties have suggested that the marked increase in demand for Priority One services arises from applicants leasing equipment from telecommunications providers for which they are likely to receive discounts rather than purchasing the equipment as internal connections, which have a high likelihood of

not being funded under the current priority rules. We seek comment on whether a change in our approach to WAN-related expenses is warranted by this increase in demand, and if so, what changes consistent with the statutory restrictions of section 254 of the Act should be adopted to meet the program's goals of improved operation, a fair and equitable distribution of funds, and effective oversight to prevent waste, fraud and abuse.

Since the telecommunications are available only as services with ownership strictly prohibited it is reasonable to require capital costs be amortized over a period of time. Payment over a period of time is what distinguishes a service from owned equipment. The rule should be clarified that only de minimus amounts of premise equipment may be included in Priority 1 services. This equipment should be limited to line termination equipment such as CSU/DSUs and routers in the case of Internet Access. Servers, filters, switches, hubs, content caches and all other premise equipment should be restricted to Internal Connections only.

7. As wireless service has become more commonplace, we have received numerous recommendations that we reconsider our policies regarding the eligibility of wireless services. Wireless telephone service, for example, is not currently eligible when used by school bus drivers or other non-teaching staff of a school, including security personnel, because we have interpreted the statutory requirement that universal service discounts be provided only for "educational purposes" to exclude use by such support staff. We seek comment on whether broadening eligibility for wireless services under the schools and libraries mechanism, consistent with the statute, would improve the application review process and whether it would increase opportunities for fraud and abuse. In addition, in light of changing wireless technologies, we seek comment on whether we need to modify any rules or policies regarding the eligibility of wireless services for support under the schools and libraries mechanism so that distribution of funds is consistent with our principle of competitive neutrality and does not favor wireline technology over wireless technology.

The BPS and BPL suggest that all personnel who perform their job responsibilities in eligible sites should be eligible for wireless telephone service. All such staff would be eligible for wired telephone service so competitive fairness requires that they should also be eligible for wireless telephone. Staff primarily working outside eligible sites such as drivers should not be eligible.

2. Discounts for Internet Access When Bundled with Content

8. In the *Universal Service Order*, the Commission concluded that schools and libraries may receive discounts on access to the Internet, but not on separate charges for particular proprietary content or other information services. The Commission held that if it is more cost-effective for a school or library to purchase Internet access provided by a telecommunications carrier that bundles a minimal amount of content with such Internet access, a school or library may obtain discounts on that bundled package. If the telecommunications carrier provides bundled Internet access with proprietary content to a school or library, and also offers content separate from Internet access, the school or library may only obtain discounts on the price of the Internet access, as determined by the price of the bundled access and content less the price of the separately-priced content. Thus, if the only Internet access a provider offers

is bundled with content for a total of \$50.00 per month, and that provider sells the content separately for \$30.00 per month, a school or library purchasing the bundled package would currently be eligible for discounts on \$20.00 per month.

9. Various affected applicants have suggested, both to us and to the Administrator, that Internet access that includes content from one provider may provide more cost-effective access to the Internet than another provider's Internet access containing minimal or no content. For example, an applicant may receive bids for Internet access from two providers, each offering service at \$50.00 a month. One provider offers access and content bundled together, and separately offers content alone for \$30.00, while the second provider just offers Internet access. An applicant might find that the bundled access and content may provide more cost-effective Internet access when considering cost, reliability, and other factors than Internet access without content from the other provider. Under our current rules, a recipient would be eligible for discounts on only \$20.00 per month for the package of access and content, but could obtain discounts on the full \$50.00 for Internet access without content from the second provider. In such a case, our rules may create undesirable incentives for an applicant to choose a provider with a similar price but poorer service and reliability.

10. We seek comment on whether a modification of our rules governing funding of Internet content would improve program operation consistent with our other goals of ensuring a fair and equitable distribution of benefits and preventing waste, fraud and abuse. Specifically, we seek comment on whether, if the only Internet access a provider offers is bundled with content but the provider also offers the content separately without Internet access, an applicant may receive full discounts on that Internet access package (including content) if that package provides the most cost-effective Internet access. Such a modification to our rules may also increase administrative efficiencies, for both applicants and the Administrator, by eliminating effort and costs associated with ensuring that applicants receive no discounts for bundled content. We seek input on the costs and benefits of such a change, including whether providers might take advantage of this approach by adding content to Internet access in order to maximize revenues. We also seek comment on whether, in keeping with our current rules, universal service discounts would continue to be available for a provider only for the cost of access without content, if a service provider offers Internet access to consumers both with and without content.

The City of Boston is concerned that many vendors are engaging in sales strategies that are moving ineligible services that should not be funded into Telecommunications or Internet Access so as to increase their total reimbursement rates under the E-Rate. Such a shift will significantly degrade the ability of the E-Rate program to meet its goals of bringing the Internet into all schools by curtailing funds available to schools and libraries with the most need. The SLD must be diligent in assuring that ineligible items do not improperly move to Internet Access or Telecommunications Services. Content should remain ineligible and vendors should be required to clearly demonstrate what the cost of content is when provided as part of Internet Access or under Telecommunications Service as part of distance learning services.

3. Compliance with the Americans with Disabilities Act

11. The Americans With Disabilities Act (ADA) provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local

government services, and telecommunications. Related statutes, which are referenced by the ADA, include the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act. The current FCC Form 471, on which entities apply for universal service discounts, contains the following notice: “The Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act, and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities.” We do not, however, explicitly require compliance with these statutory requirements as a condition of receipt of universal service discounts.

12. Some parties have suggested that we require applicants to certify that the services for which they seek discounts will be used in compliance with these acts. We seek comment on whether we should adopt such a certification requirement. In commenting on such a change, parties should comment on the language of any ADA certification, and on the timing for the ADA certification in the application process. To the extent that we would adopt such a change, we also solicit comment on whether any rule changes are needed to ensure that applicants that fail to comply with the certification no longer receive discounts. We further seek comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

Additional certifications would add to the complexity of program administration. ADA compliance is an area better dealt with outside the E-Rate program.

B. Post Commitment Program Administration

1. Choice of Payment Method

13. Under existing law and Commission procedure, the Administrator of the universal service support mechanism does not provide funds directly to schools and libraries, but rather, provides funds to eligible service providers, who then offer discounted services to eligible schools and libraries. Under existing Administrator’s procedures, service providers and applicants are advised to work together to determine whether the applicant will either (1) pay the service provider the full cost of services, and subsequently receive reimbursement from the provider for the discounted portion, after the provider receives reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process, or (2) pay only the non-discounted portion of the cost of services, with the service provider seeking reimbursement from the Administrator for the discounted portion. Because it is not clear in our rules whether the provider or the applicant may make the final determination of which of the two payment processes to pursue, the potential exists for service providers to insist that applicants to whom they provide services use the first method of paying the up-front costs, and later seeking reimbursement. Indeed, some large providers require recipients to use the BEAR form.

14. We seek comment on whether our rules should specify that service providers must offer applicants the option of either making up-front payments for the full cost of services and being reimbursed via the BEAR form process, or paying only the non-discounted portion up-front. We seek comment on the costs and benefits of our proposal to all affected parties and whether it would improve program operation overall.

15. The BPS and BPL strongly suggest that vendors should be required to offer an option

to pay only the after-discount amount. Furthermore, given the frequency of late funding commitments from the SLD, applicants who are forced to pay bills that arrive before a funding commitment is made should be allowed to submit one BEAR application for funds spent before the commitment date and then allowed to shift to a after-discount payment program for the remainder of the year. Since local laws usually require prompt payment often can not withhold payment until the funding commitment is made.

2. Equipment Transferability

16. Our rules provide that eligible services purchased at a discount “shall not be sold, resold, or transferred in consideration for money or any other thing of value.” Nothing in our rules, however, prevents transferring equipment obtained with universal service discounts from the eligible recipient to another entity without consideration for money or anything of value. We have received reports from state authorities, schools and libraries, and the Administrator that some recipients are replacing, on a yearly or almost-yearly basis, equipment obtained with universal service discounts, and transferring that equipment to other schools or libraries in the same district that may not have been eligible for such equipment.

17. Although we recognize that schools and libraries may legitimately desire to upgrade their equipment frequently as a result of the rapid pace of technological change, we seek comment on whether it is appropriate to balance this desire against the impact of such action on other parties seeking discounts under the program. We seek comment on whether the program’s goals would be improved by requiring that schools and libraries make significant use of the discounted equipment that they receive, before seeking to substitute new discounted equipment. In particular, we seek comment on whether there may be insufficient incentives in the schools and libraries mechanism to prevent wasteful or fraudulent behavior, without imposing restrictions on these transfers of equipment. We specifically seek comment on whether, as a condition of receipt of universal service discounts, we should adopt measures to ensure that discounted internal connections are used at the location and for the use specified in the application process for a certain period of time.

18. One option could be to adopt a rule limiting transfers for three years from the date of delivery and installation of equipment for internal connections other than cabling, and ten years in the case of cabling. Under this option, an applicant could replace only ten percent of its old cabling per year with new discounted internal connections (such as upgrading from copper wire to fiber optics). Otherwise, an applicant seeking discounts on new equipment to replace universal service-funded equipment that has been in place for less than the specified time periods could do so only if it traded the existing equipment to its service provider for a credit toward the purchase of the cost of the new discounted equipment. We seek comments on whether this option would achieve the goals of efficient and equitable use of the mechanism’s funds, and whether this approach would prevent both waste and fraud. We also seek comment on how this change might most effectively be implemented, and on attendant benefits and costs.

The BPS and BPL support a rule change to require a three-year waiting period before transferring or replacing goods purchased with E-Rate funds.

19. An alternate approach could be to deny internal connections discounts to any entity that has already received discounts on internal connections within a specified period of years regardless of the

intended use of the new internal connections. We seek comment on whether we should adopt such a rule, on the appropriate time frame for such a rule, and whether we should impose this limitation only in situations where the applicants have previously received discounts above a specified threshold in the relevant time period. We also seek comment on the administrative costs that would be incurred, both in the application process and in post-disbursement auditing, to ensure compliance with a rule prohibiting an entity from receiving discounts on internal connections if it previously had received such discounts. We seek comment on these and any other proposals to address this issue and thus give us further insight on how, with regard to equipment issues, we might further our goals of improving program operation, ensuring that the mechanism's benefits are fairly and equitably distributed, and eliminating fraud, waste, and abuse.

The BPS and BPL strongly oppose such an approach. An incremental approach to installing internal connections over a number of years is prudent and perhaps required by the item 25 certification requirements that all necessary supporting items are in place or budgeted. Funding support for the maintenance of internal connections investments from past years would also be a problem under this suggestion since maintenance also falls under Internal Connections.

3. Treatment of Unused Funds

20. Section 54.507(a) of the Commission's rules codifies the annual \$2.25 billion cap on the schools and libraries support mechanism. The rule also provides that "all *funding authority* for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand." Although section 54.507(a) addresses *funding authority*, it is silent as to the treatment of unused *funds*, *i.e.*, funds that the Administrator had available for disbursement, but that were not disbursed in that funding year. As discussed *infra*, unused funds from Funding Year 1 have been used to reduce the contribution factor for Funding Years 2 and 3, consistent with Commission rules and policies. We believe, however, that we should consider what should be done with unused funds that may occur in future years.

21. In accord with our efforts to reduce the amount of unused funds from the schools and libraries mechanism, we seek comment on revising the Commission's rules to clarify the appropriate treatment of such unused funds. As stated above, the Commission's rule adopted in accord with the *Universal Service Order* refers to unused *funding authority*, not unused *funds*. Thus, the Commission seeks comment on two options relating to the treatment of unused funds. The first option would be to modify the rule to require expressly that unused funds from the schools and libraries mechanism (beginning with Funding Year 2) should be credited back to contributors through reductions in the contribution factor. The second option would be to modify the rule to require expressly the distribution of the unused funds in subsequent years of the schools and libraries program, in excess of the annual cap. We seek comment on each of the alternatives. We believe that consumers may benefit from reducing the contribution factor with unused funds because it will decrease the contribution amounts that carriers recover from consumers. Alternatively, disbursing unused funds in subsequent funding years of the schools and libraries mechanism would provide additional resources for applicants, thereby assisting efforts to provide affordable telecommunications and information services to schools and libraries.

The BPS and BPL feel that history would suggest that funds returned to carriers are unlikely to get returned to consumers. Since there is a documented need from applicants for eligible services far in excess of available funds unspent money should be carried forward. Program rules, including the fact that procurements and applications have to be made for subsequent years before commitment are complete for the current year guarantee that applicants will request more money than they will actually spend. If this excess money is driven out of the E-Rate program through refunds to carriers then achievement of program goals will suffer.